

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 27, 2017

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 16SD-160

HAWAII

Issuance of Right-of-Entry Permit to the United States to Perform Remedial Investigation/Feasibility Studies on Unencumbered Government Lands in Waimea, District of South Kohala, Island of Hawaii, at Puu Kawaiwai, Panoluukia, and Kapia, Tax Map Key: (3) 6-2-001:015 (por.), and at Ouli, Tax Map Key: (3) 6-2-005:022.

APPLICANT:

The United States through its Army Corps of Engineers, Honolulu District, Department of the Army.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands in Waimea, District of South Kohala, Island of Hawaii at Puu Kawaiwai, Panoluukia, and Kapia, identified by Tax Map Key: (3) 6-2-001:015 (por.), and at Ouli, Tax Map Key: (3) 6-2-005:022, as shown on the attached table labeled Exhibit A and map, labeled Exhibit B.

AREA:

1928.097 acres, more or less.

ZONING:

State Land Use District:     Agriculture, Urban  
County of Hawaii CZO:     A-40a, road  
Refer to Exhibit A for a summary by TMK parcel number.

TRUST LAND STATUS:

TMK: (3) 6-2-001:015 is classified as Section 5(b) and (3) 6-2-005:022 as Section 5(a) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_ NO X

CURRENT USE STATUS:

The subject property is unencumbered. Refer to Exhibit A for a summary by TMK parcel number.

CHARACTER OF USE:

Environmental remediation, response, and mitigation purposes.

TERM OF RIGHT-OF-ENTRY:

One year (12 months) from date of execution.

CONSIDERATION:

*Gratis.*

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with §11-200-8A of the Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the subject request to perform remedial investigation/feasibility studies on the subject property is exempt from the preparation of an environmental assessment pursuant to:

**Exemption Class 1:** "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and its **Item 1:** "Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources."

**Exemption Class No. 4:** "Minor alteration in the conditions of land, water, or vegetation" and its **Item 1:** "Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources."

**Exemption Class 5:** "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an

environmental resource,” including its **Item 1**: “Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.); **Item 2**: “Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping;” and **Item 22**: “Conduct planning and feasibility studies.”

**Exemption Class 6**: “Construction or placement of minor structures accessory to existing facilities,” and its **Item 1**: “Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.”

These exemptions are summarized in Land Division's Notification of Exemption Form, attached hereto as Exhibit C, and incorporated herein.

REMARKS:

The United States (US) through its Army Corps of Engineers (USACE) is requesting right-of-entry to the subject properties for work described as “remedial investigation/feasibility studies” on the subject properties in West Hawaii.

**HISTORICAL PERSPECTIVE.** To attain the level of readiness necessary to deter adversaries and defend our nation, the Department of Defense (DoD) must develop, test, and deploy weapon systems and military munitions, and then train its personnel to use and maintain those systems. Since World War II, large areas both onshore and offshore in Hawaii have been used for such military training involving live ammunition. As a result, some properties are known or suspected to still contain materials that may include unexploded ordnance (UXO) and other materials remaining from previous DoD use, and are the subject of a long-term remediation effort carried out by the DoD today through its Defense Environmental Restoration Program/Formerly Used Defense Sites (DERP/FUDS) Program.

The USACE is the executing agency for the DERP/FUDS Program. The USACE Honolulu District includes Hawaii, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Republic of Palau. Planned work on projects in this region has been projected to extend to the year 2134. In Hawaii, many DERP/FUDS projects are located on public lands managed by the Department. On the island of Hawaii, the former Waikoloa Training Area (WTA) project site alone encompasses over 100,000 acres, of which the subject properties are but a small portion.

DERP/FUDS activities evaluate the presence of munitions and explosives of concern (MEC) including what is commonly known as UXO, as well as discarded military munitions (DMM)) and munitions constituents (MC) on the subject properties, and provide appropriate remediation, response and mitigation.

**REGULATORY FRAMEWORK.** The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was



enacted by Congress on December 11, 1980 to address releases or threatened releases of hazardous substances that may endanger public health or the environment. In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA), which amended and strengthened CERCLA. SARA also renamed its Installation Restoration Program (IRP) as the Defense Environmental Restoration Program (DERP) and expanded the IRP with programs to address environmental cleanup on various types of DoD-used properties. These included the FUDS which are real property formerly owned, leased, possessed by, or otherwise under the jurisdiction of the Secretary of Defense prior to 1986. The USACE was designated as the executing agency for the DERP/FUDS Program. Response actions today are authorized under DERP and SARA Section 211, and CERCLA provides the regulatory framework for environmental restoration.

The goal of the FUDS Program is to reduce, in a timely and cost-effective manner, the risk to human health and the environment resulting from past DoD activities at formerly used DoD properties. USACE prepares an Environmental Protection Plan (EPP) for each FUDS project contract to ensure adherence to the substantive requirements of all pertinent federal and state environmental laws and regulations. It details operational procedures and methods to be implemented for environmental protection, including prevention/control of pollution and habitat disruption, consideration of impacts to land, water, and air, as well as biological and cultural resources, management of visual aesthetics, noise, and also solid, chemical, gaseous and liquid wastes, radiant energy and other possible pollutants. The EPP must undergo a rigorous review by both USACE and the Regulator, which in Hawaii is the Department of Health (DOH) Hazard Evaluation and Emergency Response Office (HEER).

A Memorandum of Agreement executed on September 10, 1991 between the DoD and the State of Hawaii, represented by DOH, assures the DoD of State coordination and support for regulatory matters, however, cooperation by other State agencies to allow right-of-entry to lands under their control must also be provided.

**RIGHT-OF-ENTRY REQUIREMENT.** For all FUDS projects, commencement of site work is contingent upon availability of federal funding and landowner consent to right-of-entry. A FUDS-eligible site could become ineligible if the landowner does not grant access to the property, as participation is voluntary.

**VALUE TO THE STATE OF HAWAII.** Right-of-entry will be provided *gratis* to the Applicant, as the State of Hawaii benefits from the remediation of long standing munitions-related environmental contamination left by past military use, all at no cost to the State. Consequently, in order to protect the health, safety and welfare of the general public, it is in the State's best interests to support and facilitate DERP/FUDS projects.

**TIME-CRITICAL REQUEST.** The federal program is currently the sole means to address military munitions remediation efforts on FUDS properties in Hawaii on a statewide scale. Due to annual changes in funding availability, USACE may not always be able to submit right-of-entry (ROE) requests far in advance of their need, and delays to

ROE issuance can result in project re-prioritization and loss of funding to specific sites.

The subject properties were included in DERP/FUDS project work under a previous five-year ROE issued by the Department which expired July 31, 2016. Remaining work on the subject properties is pending issuance of a new ROE for the current year, which this submittal addresses.

ROE PERMIT CONDITIONS. When an updated form of the previous ROE was recently sent to the USACE for the upcoming ROE period, the USACE responded that it could not agree to all of the previously agreed upon ROE language due to policy changes since execution of the previous ROE. Staff is therefore still engaged in discussions with the USACE regarding the final form of the ROE.

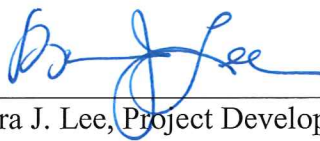
Some of the applicant requirements being discussed have included:

1. Issuance of revocable vs. irrevocable and assignable right to enter in, on, over and across the subject properties.
2. Requiring proof of comprehensive public liability insurance from contractors, consultants and/or persons acting for or on behalf of the Applicant prior to entry on the subject property, and including the State of Hawaii as an additional insured on the policy.

RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to the United States covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General;
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
  - D. Authorize the Chairperson to issue extensions to this right-of-entry to the Applicant for good cause as related to the aforementioned activities.

Respectfully Submitted,



Barbara J. Lee, Project Development Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



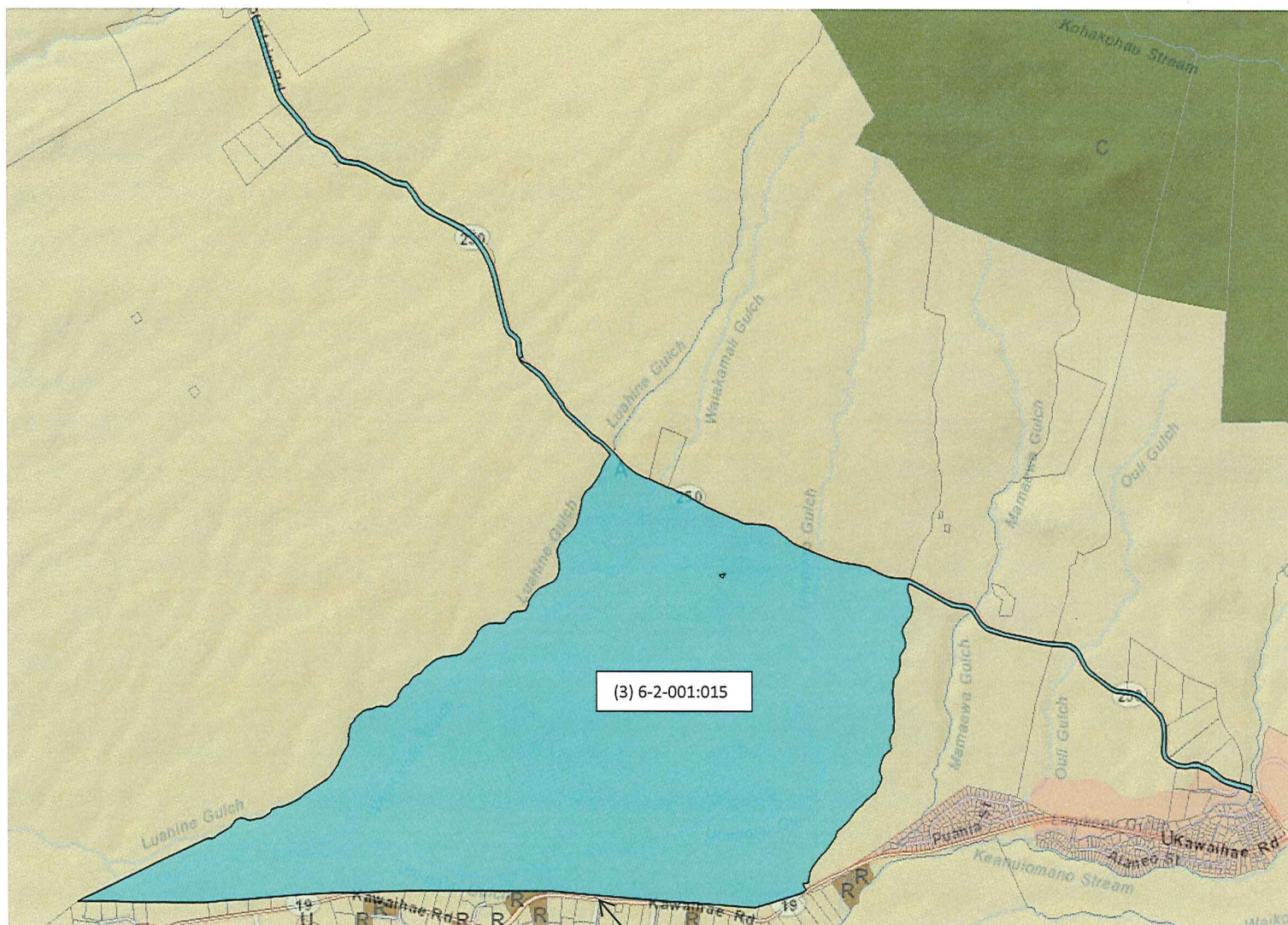


**WAIKOLOA MANEUVER AREA PROJECT NUMBER H09H1035920  
TMK PARCELS SCHEDULED FOR FY16**

TMK	TOTAL AREA (ACRES)	UNENCUMBERED AREA (ACRES)	ENCUMBERED AREA (ACRES)	ENCUMBRANCE*	PURPOSE (PERMITTEE)	LOCATION WITHIN WAIMEA, DISTRICT OF SOUTH KOHALA, ISLAND OF HAWAII (AHUPUAA)	TRUST LAND STATUS	COUNTY ZONING	STATE LAND USE DISTRICT
(3) 6-2-001:015	1930.64	1928.0623	N/A	N/A	N/A	Puu Kawaiwai, Panoluukia, and Kapia	5(b)	A-40a, Road	Agriculture, Urban
		N/A	0.1889	LOD28306	water easement (COH)	Puu Kawaiwai			
		N/A	1.6	RP7475	baseyard/ storage (DOT)	Panoluukua			
		N/A	0.7888	LOD27886	electrical easement (HELCO)	Puu Kawaiwai, Panoluukia, and Kapia			
(3) 6-2-005-022	0.035	0.035	N/A	N/A	N/A	Ouli	5(a)	A-3a	Agriculture
<b>TOTALS:</b>	1930.675	1928.097	2.5777						

\* Abbreviations: N/A = not applicable; RP = Revocable Permit; LOD = Land Office Deed;  
COH = County of Hawaii; DOT = Department of Transportation; HELCO = Hawaii Electric Light Company

**MAP OF TMK PARCELS IN SUBJECT PROPERTY  
PORTION OF WAIKOLOA MANEUVER AREA PROJECT NUMBER H09H1035920**



**EXHIBIT B**



## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS, and Chapter 11-200, HAR:

Project Title: Issuance of Right-of-Entry Permit to the United States to Perform Remedial Investigation/Feasibility Studies and Long Term Monitoring Activities on Unencumbered Government Lands in Waimea, District of South Kohala on the Island of Hawaii.

Project/Reference No.: PSF 16SD-160

Project Location: At Puu Kawaiwai, Panoluukia, and Kapia, Tax Map Key: (3) 6-2-001:015 (por.), and at Ouli, Tax Map Key: (3) 6-2-005:022, in Waimea, South Kohala, Island of Hawaii.

Project Description: Remedial investigation/feasibility studies on the subject property in accordance with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) guidelines through the Defense Environmental Restoration Program for Formerly Used Defense Sites (DERP/FUDS).

Ch 343 Trigger(s): Use of State lands (§343-5(a)(1), HRS).

Exemption Class, Item and Description, and Rationale

In accordance with §11-200-8 of the Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the subject request to perform remedial investigation/feasibility studies on the subject property is exempt from the preparation of an environmental assessment because activities may involve: 1) basic data collection, research, experimental management and resource evaluation activities that will not result in a serious or major disturbance to the environmental resources of the area; 2) mitigation of hazardous conditions due to presence of unexploded ordnance; 3) minor alterations in the conditions of the land, water, or vegetation in the area; 4) installation of appropriate signage in the interest of public safety; and other related actions, pursuant to:

**Exemption Class 1:** "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and its **Item 1:** "Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources."

**Exemption Class No. 4:** "Minor alteration in the conditions of land, water, or vegetation" and its **Item 1:** "Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources."


**Exemption Class 5:** "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource," including but not limited to its **Item 1:** "Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.); **Item 2:** "Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping;" and **Item 22:** "Conduct planning and feasibility studies."

**Exemption Class 6:** "Construction or placement of minor structures accessory to existing facilities," and its **Item 1:** "Construction, placement or installation of signage, pavement markings, buoys, or other similar structures."

Consulted Parties: Kahoolawe Island Reserve Commission, and Department of Health Hazard Evaluation and Emergency Response Office.

Recommendation: It is recommended that the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
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Suzanne D. Case, Chairperson

 Date: 1/20/17